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Programme budget for the biennium 2008-2009

Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Revised estimates arising in respect of Security Council resolution 1800 (2008) on the appointment of additional ad litem judges at the International Tribunal for the Former Yugoslavia

Thirty-ninth report of the Advisory Committee on Administrative and Budgetary Questions on the programme budget for the biennium 2008-2009

1. The Advisory Committee on Administrative and Budgetary Questions considered an advance copy of the report of the Secretary-General on revised estimates arising in respect of Security Council resolution 1800 (2008) on the appointment of additional ad litem judges at the International Tribunal for the Former Yugoslavia (A/62/809). During its consideration of the report, the Committee met with the Registrar and other officials of the International Tribunal for the Former Yugoslavia, as well as with representatives of the Secretary-General, who provided additional information and clarification.

2. In its resolution 1800 (2008), the Security Council decided that the Secretary-General might appoint, from within existing resources, additional ad litem judges upon request of the President of the International Tribunal in order to conduct additional trials, notwithstanding the fact that the total number of ad litem judges appointed to the Chambers would from time to time temporarily exceed the maximum of 12 provided for in article 12 (1) of the Statute of the International Tribunal, to a maximum of 16 at any one time, returning to a maximum of 12 by 31 December 2008. The Secretary-General states that, in October 2008, the number of ad litem judges is expected to revert to the statutory maximum of 12 judges. In connection with the appointment of four additional ad litem judges, the Secretary-

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General is requesting additional resources in the amount of $374,500, to be met from within the current appropriation for the biennium 2008-2009.

3. The Advisory Committee notes that the appointment of additional ad litem judges is intended to accelerate the Court's trial schedule. The Committee recalls the recent report of the President of the Tribunal to the Security Council (S/2008/326, annex I) in which he indicated that between 15 November 2007 and 15 May 2008, eight trials were in progress and five cases (six accused persons) were awaiting trial. The Advisory Committee was informed that, with the appointment of additional ad litem judges, the cases which are now in their pre-trial phases would be expected to be in trial by the end of the year. The Committee notes from the report of the Secretary-General that the early completion of first instance trial activity will allow the start of appeals proceedings earlier than anticipated and that the Secretary-General expects that all appeals for existing cases will be completed by the end of 2011.

4. The Committee notes that in paragraph 12 of his report, the Secretary-General indicates that shorter Tribunal operations would result in savings in the current cost of the Tribunal, which is approximately $12 million per month. **The Advisory Committee notes that the appointment of additional ad litem judges is a way to reduce the projected time frame for completion of the work of the Tribunal.**

5. In paragraph 15 (b) of his report, the Secretary-General indicates that the General Assembly may wish to request him to report on the implementation of Security Council resolution 1800 (2008) on the appointment of additional ad litem judges at the Tribunal in the context of the second performance report for the biennium 2008-2009. **In order to assess progress made, the Advisory Committee requests that information concerning the appointment of additional ad litem judges be submitted in the first performance report for the biennium 2008-2009.**

6. In its resolution 1800 (2008), the Security Council decided that the Secretary-General might appoint ad litem judges from within existing resources. The Advisory Committee notes from paragraph 11 of the report of the Secretary-General that while the Tribunal is not in a position to determine whether additional costs can be met from within the approved appropriation, every effort will be made to absorb the additional requirements within the current appropriation for the biennium 2008-2009. **The Advisory Committee expects that the appointment of additional ad litem judges will indeed be implemented from within existing resources, in accordance with Security Council resolution 1800 (2008). On that basis, the Committee recommends that the General Assembly take note of the report of the Secretary-General.**

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Programme budget for the biennium 2008-2009

Administration of justice at the United Nations

Administration of justice

Fortieth report of the Advisory Committee on Administrative and Budgetary Questions on the programme budget for the biennium 2008-2009

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on administration of justice (A/62/782). During its consideration of the report, the Advisory Committee met with representatives of the Secretary-General. The Committee also met informally with members of the Staff Committee.

2. The Advisory Committee also had the following documents before it for information:

(a) A note by the Secretary-General entitled "Administration of justice: further information requested by the General Assembly" (A/62/748 and Corr.1), which was submitted in response to General Assembly decision 62/519;

(b) A letter dated 29 April 2008 from the President of the General Assembly addressed to the Chairman of the Fifth Committee (A/C.5/62/27) transmitting a letter dated 24 April 2008 from the Chairman of the Ad Hoc Committee on the Administration of Justice at the United Nations, together with the coordinator's summaries of the preliminary observations made in the informal consultations on the draft statute of the United Nations Dispute Tribunal and of the United Nations Appeals Tribunal.

3. The report of the Secretary-General (A/62/782) responds to the request by the General Assembly in its resolution 62/228 for further information on:

(a) The scope of the new system of administration of justice, including information on the different categories of non-staff personnel, the dispute mechanisms available to them, the types of grievances made by those categories of staff and the bodies of law that are relevant to such claims (A/62/782, paras. 6-57);

08-40016 (E) 100708

(b) The jurisdiction and functions of the formal system, including grounds of appeal before the Appeals Tribunal, circumstances when a question would be decided by a panel of three Dispute Tribunal judges, conditions under which the Dispute Tribunal can refer pending cases to mediation, the allocation of cases to the Dispute Tribunal, compensation awarded by the tribunals and alternatives, and the role of the staff associations vis-à-vis the formal system of justice (A/62/782, paras. 58-80).

4. As indicated in paragraphs 3 and 4 of the report, a number of items on which the Secretary-General was requested to report have been included in the draft statutes of the Tribunals, which are contained in annexes I and II to the report. The Secretary-General intends to respond to a number of other requests contained in resolution 62/228 in his report to the General Assembly at its sixty-third session on the administration of justice, including issues related to the Office of Staff Legal Assistance, measures taken to address systemic issues, terms of reference for the Registries, revised terms of reference for the Ombudsman, possible options for delegation of authority for disciplinary measures, cost-sharing arrangements, mechanisms for the formal removal of judges and how information and communications technology can improve the system of administration of justice.

5. In its report of 25 October 2007 (A/62/7/Add.7), the Advisory Committee addressed a wide range of issues relating to the administration of justice, including the scope of the new system. **The Committee reiterates its recommendations in that regard.** In the paragraphs below, the Committee has therefore confined itself to commenting on the new proposals of the Secretary-General relating to arrangements for the transition from the current system to the new one.

6. In his report, the Secretary-General explains why he no longer considers that the most efficient and practical solution to address the pending cases filed with the current United Nations Administrative Tribunal would be to have the United Nations Appeals Tribunal play a dual role, by which it would also act as an administrative tribunal for those cases (see A/62/782, para. 82). The Secretary-General sets out a new proposal to deal with the estimated 130 to 150 cases that it is projected will not be resolved in the current system by 1 January 2009 (see A/62/782, paras. 83 and 95), the date on which the new system is to be introduced. The proposal entails the following:

(a) The transfer, as of 1 January 2009, of all cases pending in the current system — whether before the Joint Appeals Boards, the Joint Disciplinary Committees, the Disciplinary Committees or the United Nations Administrative Tribunal — to the United Nations Dispute Tribunal;

(b) The strengthening of the United Nations Dispute Tribunal for a period of one year (2009) by three ad litem judges and additional registry staffing, with a view to clearing the backlog. Nine additional temporary positions are proposed for the Registries as follows: one P-3, one P-2 and one General Service (Other level) for each of the Registries (New York, Geneva and Nairobi).

7. The Advisory Committee was informed that in the Secretary-General's view such arrangements would have a number of advantages. The United Nations Dispute Tribunal judges and ad litem judges would serve on a full-time basis, allowing them to address a larger number of cases than the United Nations Appeals Tribunal, which would not sit on a full-time basis. Furthermore, the Secretary-General states that the

caseload could be divided among the three Dispute Tribunal locations, thus ensuring that the burden of the backlog would not fall on a single body. Moreover, as indicated in paragraph 84 of the report, the United Nations Appeals Tribunal is unlikely to be in a position to consider cases until the middle of 2009, as its first session would be devoted to deciding on rules of procedure and other organizational matters.

8. The Secretary-General also reiterates his request that the General Assembly authorize the payment of an honorarium for those judgements to be completed by the United Nations Administrative Tribunal in 2008, in order to reduce the total number of cases that would need to be transferred to the new system. As indicated in the report of the Secretary-General (see paras. 94 and 95), the members of the Tribunal — most of whom have professional obligations in addition to the Administrative Tribunal duties — have indicated their willingness to rearrange their schedules to take on additional cases, provided they receive remuneration. The Secretary-General estimates that this would enable the Tribunal to dispose of at least 90 cases in 2008, or approximately 25 more cases than are normally disposed of, as it would allow members to prepare cases between sessions.

9. Upon request, the Advisory Committee was provided with information concerning progress in clearing the backlog in the Joint Appeals Boards, the Joint Disciplinary Committees and the United Nations Administrative Tribunal, as well as the status of expenditure of resources provided for that purpose in the programme budget for the biennium 2008-2009 (see annex). The Committee was also informed that the Administrative Law Unit had closed 58 cases between January and June 2008 and that, without the additional resources, it is estimated that no more than 40 cases could have been closed. With regard to the Panel of Counsel, the Committee was informed that enhanced staffing had enabled the assignment of 61 cases to counsel in the period from January to May 2008, as compared with 25 cases for the corresponding period in 2007. The Committee was informed that the impact of the additional temporary resources provided for 2008 for the purpose of clearing the backlog had been tempered by the unusually large number of new cases that had been received in the first half of 2008.

10. The Secretary-General estimates the additional requirements relating to the proposed transitional measures at $1,729,100. The projected additional requirements are mainly attributable to the provision of general temporary assistance ($988,800) for nine positions (3 P-3, 3 P-2 and 3 General Service (Other level)) for 12 months for the Registries of the three duty stations; non-staff compensation in 2009 for three ad litem judges who would receive salary and allowances equivalent to the D-2 level ($510,700); and the provision of honorariums for the services of the members of the United Nations Administrative Tribunal during 2008 ($135,000), as well as other costs relating to the ad litem judges and newly established positions under general operating expenses ($217,600), furniture and equipment ($76,800) and supplies and materials ($9,600). These additional requirements are offset in part by reductions relating to the discontinuation of the United Nations Administrative Tribunal, effective 1 January 2009, for general temporary assistance ($96,700); travel of representatives ($146,100); travel of staff ($54,100); external printing and updating the Administrative Tribunal's database ($36,900); and provisions under consultants and experts for the preparation and publication of the judgements of the Administrative Tribunal ($25,300).

11. The Advisory Committee recommends approval of the Secretary-General's proposal to transfer all pending cases to the United Nations Dispute Tribunal once the new system is in place. The Committee also recommends approval of the strengthening of the Dispute Tribunal through the addition of three ad litem judges for a 12-month period following the establishment of the Tribunal, with a view to clearing the backlog. The Committee notes that the Secretary-General's proposal is to place one ad litem judge and three registry staff at each of the Dispute Tribunal locations (New York, Geneva and Nairobi). While the Committee understands that the Secretary-General's intention is to divide the caseload so that the burden of the backlog will not fall on one body (see para. 7 above), it recommends that, in allocating additional capacity, the Secretary-General, to the extent possible, take into account the anticipated distribution of pending cases (see annex).

12. As regards the payment of an honorarium for judgements of the United Nations Administrative Tribunal (see para. 8 above), the Advisory Committee, while welcoming initiatives to clear the backlog, continues to believe that the question of the compensation of judges is a matter for the General Assembly to decide upon (see A/62/7/Add.7, para. 80). The Committee points out, however, that the Assembly will only take up the proposal at the main part of its sixty-third session and that it may therefore be too late for approval of the payment of an honorarium to have an impact in terms of the number of cases that judges of the Administrative Tribunal can handle in 2008. The Committee was informed that the Administrative Tribunal had already held a special session in April/May 2008 and was scheduled to hold its regular sessions in June/July and October/November 2008. It will be for the Assembly to decide if it wishes to approve the payment of an honorarium in the event that the current system continues beyond 1 January 2009 (see paras. 14 and 15 below).

13. The Advisory Committee notes that, as indicated in paragraphs 1 and 2 of the Secretary-General's report, the Sixth Committee considered the legal aspects of the report of the Secretary-General on the administration of justice contained in document A/62/294 and issued conclusions, of which the General Assembly took note in its decision 62/519. In the same decision, the Assembly established the Ad Hoc Committee on the Administration of Justice at the United Nations to continue the work on the legal aspects of the administration of justice. The Ad Hoc Committee met from 10 to 18 April and on 21 and 24 April 2008. The Advisory Committee was informed that informal consultations on the draft statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal were ongoing.

14. The Advisory Committee notes that the transitional measures proposed by the Secretary-General are contingent upon the conclusion of the consideration of the legal aspects of the matter and the subsequent adoption of the draft statutes by the General Assembly in time to allow for the election and appointment of judges of the two Tribunals so that the new system can be in place by 1 January 2009. Furthermore, the Committee notes that there have already been some delays in the schedule envisaged for the introduction of the new system, as transitional measures were to have been considered by the Assembly at the second part of its resumed sixty-second session, held in May/June 2008, and will now only be taken up at the sixty-third session. It is therefore unclear whether it will be possible to put the new system into effect according to the timetable set out by the Secretary-General.

15. Accordingly, taking into account its observations in the paragraphs above, the Advisory Committee recommends appropriation of the resources requested by the Secretary-General for the transitional measures set out in his report (A/62/782) subject to the adoption by the General Assembly of the statutes of the United Nations Dispute Tribunal and of the United Nations Appeals Tribunal, the election and appointment of the judges for the two Tribunals and such decision as the Assembly may take concerning the payment of an honorarium to the judges of the United Nations Administrative Tribunal. In accordance with Assembly resolution 61/261, the Secretary-General should ensure that the current system continues to function properly until the new system becomes operational. Should the introduction of the new system be delayed beyond 1 January 2009, resources required to continue the current system and to continue to clear the backlog should be absorbed from within the existing provision for the administration of justice for the biennium 2008-2009 and reported in the second performance report.

Annex

A. Current estimated backlog

	Number of cases completed in 2006	*Number of cases completed in 2007*	*Active cases as at 1 May 2008*	*Projected backlog as at the end of 2008*
Joint Appeals Board — Headquarters	98	116	107	90
Joint Appeals Board — Geneva	27	43	25[a]	10[b]
Joint Disciplinary Committee — Headquarters	20	21	96	40
Joint Disciplinary Committee — Geneva	13	17	5	—
United Nations Administrative Tribunal	37	65	133	140[c]

[a] Includes one case that covers 13 appeals and another that covers 3 appeals that have been combined in one.

[b] Backlog defined as cases ready for consideration (i.e. exchange of parties terminated). Geneva is currently facing a significant influx of cases from the Office of the United Nations High Commissioner for Refugees owing to its promotion system. Furthermore, two of the three Alternate Secretaries are going on maternity leave in the course of the year (middle and second part of 2008).

[c] Based on preliminary contact with the United Nations Administrative Tribunal as at 1 May 2008. Should the General Assembly approve the payment of an honorarium to the Tribunal judges in 2008, as an exceptional measure, it is estimated that the backlog would be reduced to 110.

B. Estimate of what the backlog would have been if there had been no additional resources provided during 2008

	Number of cases completed in 2006	*Number of cases completed in 2007*	*Active cases as at 1 May 2008*	*Projected backlog as at the end of 2008*
Joint Appeals Board — Headquarters	98	116	101	100
Joint Appeals Board — Geneva	27	43	35[a]	20[b]
Joint Disciplinary Committee — Headquarters	20	21	91	80
Joint Disciplinary Committee — Geneva	13	17	5	—
United Nations Administrative Tribunal	37	65	147	154

[a] Includes one case that covers 13 appeals and another that covers 3 appeals that have been combined in one.

[b] Backlog defined as cases ready for consideration (i.e. exchange of parties terminated). Geneva is currently facing a significant influx of cases from the Office of the United Nations High Commissioner for Refugees owing to its promotion system. Furthermore, two of the three Alternate Secretaries are going on maternity leave in the course of the year (middle and second part of 2008).

C. Status of expenditure for administration of justice as at 31 May 2008

(Thousands of United States dollars)

Office	*Appropriation for 2008*	*Expenditure as at 31 May 2008*	*Projected expenditure June through December 2008*	*Total expenditure for 2008*
United Nations Administrative Tribunal secretariat	426.9	50.1	318.7	368.8
Joint Appeals Board/Joint Disciplinary Committee New York	200.9	14.5	118.4	132.9
Joint Appeals Board/Joint Disciplinary Committee Geneva	142.9	56.0	86.9	142.9
Administrative Law Unit	264.1	49.6	214.5	264.1
Executive Office of the Secretary-General	178.1	14.7	103.0	117.7
Panel of Counsel	166.0	35.5	108.2	143.7
Total	**1 378.9**	**220.4**	**949.7**	**1 170.1**